

There is nothing in the Act or its legislative history indicating that Congress considered the issue of how to accommodate stations operating on channels not encompassed by the basic service tier. Certainly Congress never considered that the costs of addressability that on-channel carriage in that situation could impose on cable systems could materially exceed the costs required to meet tier buy-through requirements or the impact of those costs on subscriber rates. Because these considerations go so far beyond anything that Congress contemplated in adopting the on-channel carriage requirement, the FCC should interpret that provision as it has proposed and leave resolution of channel assignment disputes involving stations whose channel is not encompassed by the basic service tier to negotiations between the cable operator and the affected broadcaster.

Amendment of Table of Markets.

Finally, Viacom notes that the United States Copyright Office has stated that the FCC should not assume that if the FCC revises its table of markets (Section 76.51 of the FCC's Rules) the Copyright Office will necessarily be bound by the revised list for determining copyright liability. Comments of United States Copyright Office at 6. For the reasons set forth below, Viacom believes that the position of the Copyright Office on the market redesignation question requires that the FCC ensure that any revision of its table of markets will not affect copyright liability for carriage of some signals.

Under Section 614(i)(2) of the Act, if a station is inside a cable system's ADI but distant for copyright purposes, the cable system does not have to carry the station unless the station agrees to indemnify the system for its additional copyright liability. If the FCC amends the station's market listing in Section 76.51 so that the station becomes a "local" signal for copyright purposes, the cable system would be required under Section 614 to add the station. But if the Copyright Office subsequently refuses to accept for copyright purposes the FCC's redesignation of the station's market and still treats the station as a distant signal, the system will be subject to distant signal fees for carrying the station, perhaps even at the 3.75% rate for non-permitted independent stations. Hence, to prevent cable systems from having to carry local stations and then pay substantial distant signal fees for those stations in the event the Copyright Office does not adopt the FCC's revised table of markets, Viacom recommends that, where a station becomes "local" for copyright purposes by virtue of market redesignation, the FCC should permit a cable system to condition carriage of that station on an indemnification agreement. The FCC should also permit any such indemnification agreement to require such security as the cable system reasonably deems necessary (such as the station placing funds to pay potential copyright liability in escrow until the issue is resolved) to compensate the system for any additional copyright liability resulting from a determination

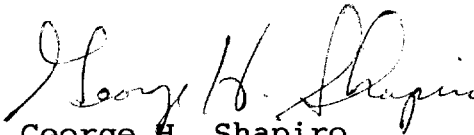
by the Copyright Office that the station should still be treated as a distant signal for copyright purposes.

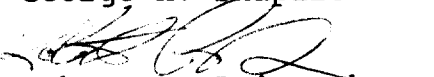
Conclusion

For the foregoing reasons, Viacom urges that the FCC, when it adopts rules in this proceeding, adopt the proposals made by Viacom in its original Comments and these Reply Comments.


Respectfully submitted,


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